

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

JAMES TANUI KIPTANUI,

Case No. 3:24-cv-043

Petitioner,

:

- vs -

District Judge Michael J. Newman
Magistrate Judge Michael R. Merz

THE STATE OF OHIO,

:

Respondent.

ORDER: (1) ADOPTING REPORT AND RECOMMENDATION (ECF No. 11); (2) DISMISSING WITHOUT PREJUDICE PETITIONER'S AMENDED PETITION (ECF No. 10); (3) DENYING A CERTIFICATE OF APPEALABILITY; (4) CERTIFYING TO THE UNITED STATES COURT OF APPEALS THAT AN APPEAL WOULD BE OBJECTIVELY FRIVOLOUS AND THEREFORE PETITIONER SHOULD NOT BE PERMITTED TO PROCEED *IN FORMA PAUPERIS*; AND (5) TERMINATING THE CASE ON THE DOCKET

The Court has reviewed the Report and Recommendations of United States Magistrate Judge Michael R. Merz (ECF No. 11) to whom this case was referred pursuant to 28 U.S.C. § 636(b), and noting no objections were filed thereafter, and that the time for filing such objections under Fed. R. Civ. P. 72(b) has expired, hereby **ADOPTS** said Report and Recommendations.

Accordingly, it is hereby ORDERED that the Amended Petition be DISMISSED without prejudice. Petitioner is DENIED any requested certificate of appealability and the Court hereby certifies to the United States Court of Appeals that an appeal would be objectively frivolous and therefore should not be permitted to proceed *in forma pauperis*.

IT IS SO ORDERED.

May 21, 2024

s/Michael J. Newman

Hon. Michael J. Newman
United States District Judge